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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2006

CORAM :

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Civil Miscellaneous Appeal No.63 of 2000 and
C.M.P. Nos.8616 to 8618 of 2006

Murugeshpandian

.. Appellant/Petitioner

Vs.

The New India Assurance Company Limited,
Regional Office,
Obli Towers,
D.B. Road, R.S.Puram,
Coimbatore.

.. Respondent/3rd Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decretal Order dated 13.01.1999 made in M.A.C.T.O.P. No.1119 of 1996 on the file of the Motor Accidents Tribunal and Second Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.N.Anand Venkatesh

For Respondent : Mr.M.Krishnamurthy

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Order dated 13.01.1999 made in M.A.C.T.O.P. No.1119 of 1996 on the file of the Motor Accidents Tribunal and Second Additional Subordinate Judge, Coimbatore.

2. C.M.P. No.8616 of 2006 has been filed to condone the delay of 1412 days in filing the petition to bring the legal representatives of the deceased appellant, on record. C.M.P. No.8617 of 2006 has been filed to set aside the abatement of the appeal in C.M.A. No.63 of 2000. C.M.P. No.8616 of 2006 has been filed to bring the proposed petitioners herein, as legal representatives of the deceased, the sole appellant in the above C.M.A.



3. Learned counsel for the respondent Insurance Company, the Insurer, submits that since the appeal has been filed by the injured claimant seeking enhancement of compensation awarded by the Tribunal and the injured appellant has died, the legal representatives cannot be brought on record in the above appeal. In support of his contention, the learned counsel relied upon the full bench decision of the Karnataka High Court, reported in 1991 ACJ 707, in the case of Kannamma Vs. Deputy General Manager, Karnataka State Road Transport Corporation. In that decision in paragraph 10, it is observed as follows:

"(1) The common law rule actio personalis moritur cum persona as embodied in section 306 of the Indian Succession Act since applies to India, a claim by a person for compensation for personal injuries caused in a motor accident does not, on that person's death not being the consequence of such injuries, survive to his/her legal representatives;

(2) Cause of action for personal injuries being founded on tort (motor accident caused by the tortfeasor), injured person's claims for damages under heads recognised by common law and not by statute, based on such tort and not independently of it cannot, on such person's death, survive for prosecution by his/her executors or administrators (or legal representatives) since section 306 of the Indian Succession Act, in express terms, declares that the cause of action in favour of a person for personal injuries (tort) does not survive on such person's death to his/her executors or legal representatives;

(3) A claim by a person for compensation for personal injuries, be it pending before the Claims Tribunal, be it pending in the first appellate court or be it pending in the second appellate court does not survive on such person's death not caused as a consequence of personal injuries to his legal representatives;"

4. In the light of the law laid down by the full bench of the Karnataka High Court Judgment cited supra, the contention of the learned counsel for the respondent has to be accepted. Accordingly, the above C.M.Ps. are liable to be dismissed and are accordingly dismissed.



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5. Learned counsel for the respondent further submitted that the owner of the vehicle involved in the accident, namely, the insured, has not been impleaded as a respondent and in his absence, no liability can be fastened on the insurer. Learned counsel for the appellant fairly concedes that. Therefore, without impleading the owner of the vehicle, the insured, the filing of the above appeal against the insurer is not maintainable and on that ground also, the appeal is liable to be dismissed and is accordingly dismissed with no order as to costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Motor Accidents Tribunal and
Second Additional Subordinate Judge,
Coimbatore.

2. The Record Keeper,
VR Section, High Court, Madras. 104.

+ 1 cc to Mr. N. Anand Venkatesh, Advocate SR No. 42654

+ 1 cc to Mr. M. Krishnamoorthy, Advocate SR No. 42480

NA(CO)
SR/4.11.2006

C.M.A.No.63 of 2000 &
C.M.P. Nos.8616 to
8618 of 2006